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<i>Katharine Marbury, Benjamin Woodroffe, and Mary his Wife, Gilbert Thacker, and Elizabeth his Wife.</i>	}	Appellants.	{	<i>Ann Andrews; Francis Painter, and Richard Spour Executors of William Noy, the Executors of Torbuck, Creditors of William Marbury, and others.</i>	}	Respondents.
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The Appellants C A S E.

THOMAS Marbury the Father of William, Richard, Katharine, Mary and Elizabeth being seiz'd in Fee of Marbury, Weverham and Redish, and of the Townships of Gropenhall and Latchford in the County of Chester, by Will devised to Mary his Wife, William his Son, and others, all his said Manors &c. for 100 Years, in Trust to pay his Debts, and 120 l. per Ann. to his Wife, 40 l. per Ann. to his Son Richard, 1000 l. to Katharine, and 1000 Marks a piece to Mary and Elizabeth for their Portions, and 10 l. per Ann. a piece for their Maintenance during their Mother's Life, and 20 l. per Ann. a piece after her Death, till the Portion's paid; and gave his Son William 50 l. per Ann. till his Debt's paid, remainder of the Term to William, and made his Wife Executrix, and Dyed, leaving his Manors &c. to descend to William his Son and Heir.

William Marbury (as is pretended) without the other Trustees, conveyed the Premises to Brook, and others, to the use of himself for Life, to the intent that he might dispose thereof to any Person, and use, he should think fit; and the Trustees to stand seiz'd for such Uses, and after his Death to dispose of the Premises unfold by him, and to pay his, and his Fathers Debts, his Sisters Portions, Brothers and Sisters Annuities, &c.

William Marbury made several Mortgages of several parts of his Estate, and incumbered it with divers Statutes, Judgements, and Recognizances, and contracted many Debts by Bond, and simple Contract, to the amount of many Thousand Pounds.

William Marbury married Katharine Columbel, an Heiress of 800 l. per Ann. whereof the Manor of Ratcliff upon Soar was part, of which she levied a Fine to the use of William Marbury and his Heirs, to sell and pay the Debts on the Cheshire-Estate, which was to be settled on them and their Issue; and in Trinity Term, William and his Wife levied a Fine, and suffer'd a Recovery of all the Premises (except the Salt-works) and declared the uses, first to corroborate a Term of 1000 Years granted to Sir William Rawlinson, then to raise 4000 l. to pay Debts, Remainder to himself for Life, Remainder to his Wife for Jointure, Remainder to his first, and every other Son in Tail, Remainder to himself in Fee, and the use of the Salt-works to William and his Heirs.

Sir William Rawlinson's Mortgage was assign'd to Rigby to secure 3000 l. and a new Term of 1500 Years created as a farther security of the 3000 l.

The Appellants Katharine, Mary and Elizabeth releas'd their Portions charged on the Estate by their Father's Will, and took William's Bonds for the same; & William Marbury, and his Wife levied a Fine for confirming Rigby's Mortgage &c.

William Marbury (as is pretended) made his Will, wherein he took notice that his Sisters had releas'd their Portions, which were still unpaid, and that he Owed 1500 l. to his Cousin Andrews, and devised Ratcliffe on Soar, and the Salt-works to his Wife, to sell and pay those Debts, and Interest, (the Mortgages chargeable thereon, and his other Debts being first paid,) and made his Wife Executrix, who proved the Will.

William Marbury's Widow having disposed of most of the Personal Estate, to prevent Suits, agreed with the Coheirs, and for 198 l. which she had paid towards William's Debts and Funeral, and 800 l. more for her Interest in the Cheshire Estate; The Widow releas'd all her Right therein, and in Ratcliffe on Soar, and in the personal Estate, except her Paraphernalia.

After great expences in improvements the Appellants sold Ratcliff on Soar for 8000 l. In June 1688. and applied the Money to pay Debts affecting the Estate.

After which, many Suits arising, the Appellants the Coheirs, their Trustees and former Creditors, by Mortgages, Statutes, Judgments and Recognizances, for 11200 l. Rent by the present Mortgages, Mortgage to them the Cheshire-Estate.

Soon after Mr. Bretland (hitherto Counsel for the Appellants,) occasion'd many Creditors to sue under the aforesaid pretended Deeds, which by his direction, were recited in the aforesaid present Mortgage; and several Bills being exhibited in Chancery against the Appellants, and more being threatened, the Appellants exhibited their Cross-Bill, and prayed

26 Jan. 1667

25 and 26 of Febr. 1672, by Lease & Release.

In the Years 1675, 1676, and 1677, & after.

In 1676.

1677.

14 October, 1677.

12 March 1680.

14 December, 1683.

18, and 19 July, 1684.

In June 1688.

1st and 2d August, 1687.

prayed they might not be charged beyond the value of the Estate descending to them, and submitted to be charged so much, and to pay the Surplus above what they had paid, and was due to themselves, and that a Commission might go to prove the Value, which Commission did issue, and the Premises were proved worth above 30000 *l.* since which, many Estates have fallen in, whereby the Premises in Question are much increased in Value.

12 June, 1695. These Causes came first to be heard, at which time it was ordered that the several Deeds, Wills, and Creditor's Securities should be brought before the Master, and he to state all Party's Demands, and the Funds, on which the same were secured, the Dates of the Securities, and in what Order of time they stood, and were payable, and all Parties to go to Account, and to have just Allowances, and be examined, and after Report the Court would give directions on the whole; and there all things rested about three Years.

Decem. 1699. The Appellant Dr. Woodroffe married Mary one of the other Appellants, and proceedings were revived and Prosecuted anew.

1700. In order to put an end to all Matters, the Appellants the Coheirs having agreed with many of the Creditors, Dr. Woodroffe paid the respective Sums so agreed to the said Creditors, and they released the Premises in Question; the Money by him paid with Interest to the 11th of November 1703, amounting to about 4000 *l.*

23 Jan. 1700. The pretended Creditors Andrews, Noy, and Couch procured a Report for their several Debts, and the Master certified Andrews Debt and Interest then to be 1688 *l.* Noy's Debt and Interest to be 1649 *l.* 16 *s.* and Couch's Debt to be 64 *l.*

Exceptions were taken to this Report.

16 Febr. 1700 The Master Reported the several matters aforesaid with several other matters, as per Report, and Exceptions were taken thereto.

13 Aug. 1701 The several Causes came to be finally heard upon the said Exceptions, and on the matter of the Master's Report before the late Lord Keeper Wright; and the several Exceptions were over-ruled, and it was then Decreed, that the Estates in Question should be Sold in six Months, and first the Debts of Thomas, then of William Marbury, and then of the Appellants should be paid, and all Parties were to go to Account, and to have just Allowances, and what they had actually paid to be Allowed, and no more, and lasting Improvements.

Which Decree (so far as relates to the Sale of the Estate in Question, being only excepted) and the Report, and subsequent Orders thereon, the Appellants the Coheirs and Mr. Thacker humbly hope shall be reversed,

In Regard there is no Provision therein made for the Payment of the Appellants the Coheirs Portions, and Maintenances prior to the Bond and simple Contract Creditors of William Marbury, though it plainly appears, their said Debts were originally charged on the Premises in Question by their Father Thomas Marbury's Will.

In Regard the said Appellants, before and after William Marbury's Death, became bound for many of his Debts in several Bonds, for several large Sums, which they were forced to borrow and to Pay, and the Appellant Mr. Thacker hath been forced to pay above 600 *l.* for Debts, which the Appellant Elizabeth his Wife was Bound for, and no Provision is made in the said Decree for their Relief; but they being all, that remain of that antient Family of the Marbury's, must inevitably be reduced to the greatest Extremitys, for their Services done to some of the Creditors, if not assisted therein.

In Regard there is no Time or Liberty given for the Appellants the Coheirs to redeem their Inheritance, nor are the several Creditor's Accounts to this Day stated and reported, nor ascertained, who shall receive the money arising by the Sale.

In Regard the Foundation of the Decree to let in all Creditors of William Marbury on an equal Foot, is built on the Deeds of the 25th and 26th of February 1672. which Deeds, if ever Executed by William Marbury, yet had he then no Power to create that Trust, the Estates being then vested in Trustees by his Father's Will, who never joined with him in making those Deeds; nor are they presumed to have now any subsisting Trust to pay Debts, other Settlements and Disposals of the Premises being afterwards made, and other Uses declared, pursuant to the Power reserved in the same Deeds to William Marbury, to make any other Disposition of his Estate: And in Regard the Proof of the Deeds is very suspicious, and the Appellants were not permitted to try at Law, whether they were the Deeds of William Marbury, as was insisted on at the hearing of the Cause.

In Regard the Debts of Andrews, Noy, and Couch are reported, and that Report confirmed by the Decree, altho' they were Debts without consideration, nor were they duly proved, and yet the Appellant's exceptions to the same were over-ruled to the prejudice of the said Appellants, and of all other just Creditors; especially in the pretended Debt of Andrew's; which if it had been a real Debt, she has been more than paid by the Appellants.

In Regard the pretended Will of William Marbury is reported and esteemed a good Will by the Decree, to support Andrews's Debt, which Will is very suspicious, as appears in the Proofs.

In Regard it appears fully in Proof in the Proceedings, that the Premises in Question are worth above 30000 *l.* and that the Debts far exceed 19000 *l.* therefore though a Sale be, yet the Appellants conceive it ought not to be for the 19000 *l.* which must be to the Ruin of the said Appellants, and to the great prejudice of many Creditors, whose Debts stand late to be Paid.

The Appellants do humbly conceive they ought to be considered as Heirs, who are willing

ling and ready to redeem their own Estate, and, if not admitted thereto, must loose many Thousand Pounds paid by them for their Father's and Brother's Debts; and also they must loose what is Due to themselves for their Portions and Annuities, to the amount of 12 or Thirteen Thousand Pounds, beyond what they can hope to receive out of the Dividend of 19000 *l.*

9. In Regard the Earl *Rivers* was irregularly admitted Purchaser of the Premises without Notice, and against the Rules of Equity, which ought to give the Preference to the Appellants, in case they or any of them will give as much as a Stranger, there being no Precedent, that Heirs have been denied to redeem their own Estate, being equal Bidders with any others.

10. In Regard a Rehearing of the said Cause hath been, and no Order made thereon, whereby the whole Decree lies open: and therefore it ought not to be in Force to confirm the Earl *Rivers* Purchaser, by virtue of subsequent Orders, built upon a Foundation that is itself subverted. For which and many other Reasons, the Appellants the Coheirs humbly hope the said Decree shall be reversed in all parts (except as to the Sale) and that the Appellants may be Relieved against the same, and the Reports and subsequent Orders thereon.

The Appellant Dr. Woodroff's particular CASE.

THE time Limited by the Decree for Sale of the Premises (for want of Purchasers) 19 Feb. 1701, was enlarged six Months.

After the expiration of the said six Months, a proposal being put in before the Mr in behalf of the Appellant *Woodroffe*, to give 23000 *l.* for the Purchase of the said Premises, the said Appellant upon his Petition to the late Lord Keeper *Wright*, and an Order made thereon the 3d of May 1703, was admitted the Purchaser, and was to pay the Purchase Money by the 23d of June following.

Upon the Creditor's motion to discharge the Appellant from the Purchase, the Appellant Paid a 1000 *l.* in Court in part to be dispos'd of, as the Court thought fit, and it was then order'd, and the Appellant obliged to consent that the said 1000 *l.* should be lost, if he paid not the residue by the 11th of November following. The said 1000 *l.* was presently distributed among the Creditors, and a Commission was to issue to prove (*Inter alia*) the Appellant's demands upon the Premises; which he was to detain out of the Purchase-money; pursuant to which Order a Commission issued, at which was proved due to the Appellant for Money *Bonâ-fide* paid by him in discharge of many Debts of *Thomas* and *William Marbury*, and in improvements since his Marriage about 4000 *l.*

The Creditors refusing to join in the Commission, the Appellant petition'd and obtain'd an Order the 10th of August 1703 to take the Commission *ex parte*, if they did not join in 10 days, at which time the Creditors join'd; but the Commission issuing late, and the proofs being above 200 Sheets, it was not possible to ascertain the Appellant's demands by the limited time; and thereupon, and on the Master's Certificate, the time was enlarged; but being from time to time by the artifice of the Solicitors delayed in procuring, and perfecting the Report, (though contrary to the Order of February 17th 1703.) are not yet ascertain'd.

The Appellant was to be discharged (*unless Cause*), the 11th of May, and to pay Costs, 29 Apr. 1704 and the Master to receive new Proposals of other Purchasers.

The Appellant was discharged, and to pay Costs to be Taxed by the Master, and May 11 1704 hath paid them accordingly.

The Right Honourable Earl *Rivers* having propos'd to give 18500 *l.* for the Premises in Question, was the 7th of March 1704, certified by the Master the best Bidder, and by Order of the 9th of March was confirm'd *nisi causa*.

Upon the Creditor's motion, and informing the Court, that the Premises were worth 25000 *l.* and that they should loose their Debts, if the same were Sold to Earl *Rivers* at 18500 *l.* the time was enlarged to the last day of the last Easter Term.

In which time the Appellant Dr. *Woodroffe* propos'd 19000 Pound, and the 21st of May 19 May 1705 was Certified the best Purchaser.

It was order'd if the Appellant brought before the Master 2000 *l.* in a Week, and 25 May 1705 17000 *l.* in 3 Months more, then he to be the Purchaser, or to loose his 2000 *l.* if the 17000 *l.* was not paid in the time Limited.

The Master Certified the Payment of the 2000 *l.* in behalf of the Appellant *Woodroffe* 8 June 1705. and the same Day the Creditors moved to discharge the Appellant's Order for being Purchaser at 19000 *l.* and that *E. Rivers* might be Purchaser at 18500 *l.* but the Court being tyed up by the Decree, for the Sale of the Estate to the best Bidder, the Dr. having Bid most was the best Bidder; and therefore having paid in 2000 *l.* if he would bring in the remaining 17000 *l.* in three months, he was to be confirm'd; whereupon *E. Rivers* Counsel without Notice grafting on the Creditor's motion propos'd that if *E. Rivers* (then present in Court) would give 500 *l.* more, to make him equal with the Appellant, and would make present Payment of the whole, that he might be accepted as the Purchaser; and the Earl agreeing thereto, notwithstanding the full reply made thereto by the Dr. and his Counsel, was confirm'd the Purchaser, and order'd to pay his Money by Midsummer-day: And the Appellant's 2000 *l.* to be taken back, notwithstanding the Appellant (then also present) saving his right to his Purchase, then bid 500 *l.* more.

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The Appellant afterwards moved to discharge the said *E. Rivers's* Order, but could not prevail.

3 July 1705 Upon the Mortgagees Petition a Re-hearing was ordered, and the Cause was Re-heard thereon, but no Order made.

10 July 1705 It was ordered (against some of the Creditor's motion to the Contrary,) that the Order for Re-hearing should stand, at which time the Earl having paid in only 12000 *l.* moved for Possession of the Premises, desiring to detain the remaining 7000 *l.* at Interest, till the Creditors should agree the receipt of it, and 'twas order'd *sine die* that he should pay his whole money and have Possession of the same.

With several of which Orders, particularly the Order of the 23d of June 1703. obliging the Appellant *Dr. Woodroffe* to loose his 1000 *l.* the Order of the 29th of April, 1704. whereby the said Appellant was discharged from being the Purchaser with Costs; and the Order of the 8th of June, 1705. whereby the said Earl *Rivers* was Irregularly admitted the Purchaser of the Premises, and with the proceedings of the Creditors upon the aforesaid Decree, and Orders, or some of them, the said Appellant *Woodroffe* is aggrieved, and humbly hopes the same shall be *Reversed*.

1 In regard the Appellant upon his being admitted the Purchaser of the Premises by the Order of the 23d of June 1703. did consent to such hard Conditions as have seldom, if ever, been imposed on any Purchaser under any former Decrees of that Court, and no such Precedent has been found, and yet the Penalty of it hath been strictly taken of the Appellant, though the subsequent Orders do not confirm the same, or mention the loss of the said 1000 *l.* so as to enforce the Appellant to forfeit the same.

2. In regard by the Order of the 29th of April, 1704. the Appellant was not only discharged from the said Purchase, but over and above what he was before ordered to loose, was Condemned in Costs, which were Taxed against him, and have been since Paid by him; tho' the aforesaid 1000 *l.* could be no otherwise required in Equity to be deposited, than to Answer the said Costs.

3. In Regard after the aforesaid Hardships laid upon the said Appellant by the aforesaid Orders, when the said Appellant had made his 2d. Proposal, hoping thereby to put himself in a Condition to recompence his Loss and retrieve the Estate, and by Order of the 25th of May aforesaid was confirmed the Purchaser thereof, on Condition of depositing 2000 *l.* within a Week, and loosing the same, if he did not Pay in the remaining 17000 *l.* in three Months; the former of which Conditions he performed with no small Trouble, as well as Loss, (having called in his Money so suddenly, when it was out on a very good Mortgage, and being forc'd to give large Allowances for such prompt Payment) and had made no default in the later, and thereby was in Equity the absolute Purchaser: and in respect of his Relation to one of the Coheirs of the Estate, was more intitled to the favour of the Court than any Stranger upon the same Terms; yet by the Order of the 8th of June following, he was discharged from being the Purchaser without any default of his, and without any recompence for his former 1000 *l.* or for the loss in calling in his 2000 *l.*

4. In Regard the confirming of the Earl *Rivers* Purchaser of the Premises, was irregular and against all the Rules of the Court of Equity, and contrary to the words of the Decree it self: whereby the Bidding was to be before the Master, and by the Rules of Court, the same ought to be with Personal Notice to all Persons concerned before such Confirmation can be had; Whereas in this Case there was no manner of Notice to any Persons whatever from the Earl *Rivers*, but without regard to that Rule, he was confirmed the Purchaser of so valuable an Estate by his Counsel's grafting only on the motion of the Creditors, and yet proposing no more than the same Summ, for which the Appellant was before confirmed, and had paid in part of it according to the Order of Court, and that with so manifest a disparity in the Bidding, that the Appellant not only Bids in the right of an Heir to redeem what he hath a Right to do, but shall loose the greatest part of 7000 *l.* due to him and his Wife, and the other Coheirs as much more, without any possible Recompence, if the said Appellant *Woodroffe* be discharged from being the Purchaser.

5. In Regard that if the Earl *Rivers's* Bidding in that manner was to be admitted, then the Appellants farther Bidding of 500 *l.* more at the same time was so too, and had this further Reason in it, that it was most consonant to the Decree for Sale, which was to be to the best Purchaser, or to him that would give most.

For all which, among many other Reasons, the said Appellant humbly hopes, the said Order of the 8th of June, for confirming Earl *Rivers* the Purchaser may be *reversed*; and that the Appellant *Woodroffe* may be affirmed the Purchaser of the said Premises and that the said Appellant's 1000 *l.* by him formerly Paid, may be restored to him; and that the said Appellant may be Relieved in the Premises against the said Orders.

Richard Coxeter.

*Katharine Marbury, Benj.
Woodroffe and Mary his Wife,
Gilbert Thacker, and Elizabeth his
Wife. — Appellants.*

*Ann Andrews; Francis Painter, and
Richard Spur Executors of Wil-
iam Noy, the Executors of Tor-
buck Creditors of William Mar-
bury, and others. — Respondents.*

The Appellants CASE.

*To be Heard at the Barr of the
House of Lords, the 11th of
February.*